

AL-MAJALLA AL AHKAM AL ADALIYYAH (The Ottoman Courts Manual (Hanafi))

BOOK VIII. WRONGFUL APPROPRIATION AND DESTRUCTION.

INTRODUCTION.

TERMS OF ISLAMIC JURISPRUDENCE.

- 881. Wrongful appropriation consists of taking and keeping the property of another, without that person's permission. The person taking such property is called the person wrongfully appropriating the property. The property itself is called the property wrongfully appropriated. The owner of such property is called the person whose property has been wrongfully appropriated.
- 882. Standing value is the value of buildings and trees as they stand in the ground. The value of the land is estimated first together with the buildings and trees and then without the building and trees. The difference between the two valuations is called the standing value of the buildings and trees.
- 883. The building value is the standing value of the buildings.
- 884. The pull-down value is the value of the debris of the buildings after they have been pulled down and of the trees after they have been uprooted.
- 885. The pulling-down value is the pulled-down value after deducting therefrom the cost of pulling down buildings or uprooting trees.
- 886. The minus value of land consists of the difference between the rent of a piece of land before cultivation and after cultivation.
- 887. Direct destruction consists of the destruction of a thing by a person himself. The person destroying the thing is called the actual doer of the act.
- 888. Indirect destruction consists of being the cause of the destruction of a thing. That is to say, to do an act which causes the destruction of another thing in the normal course of events. The person performing such act is called the person causing the destruction. *yvT*, Examples:-
 - (1). The cord of a hanging lamp is cut. The lamp falls down and is broken. The person cutting the cord is the direct cause of the destruction of the cord and is the indirect cause of the destruction of the lamp.
 - (2). A person splits a water-skin in half and oil contained therein escapes and is lost. Such person is the direct cause of the destruction of the water-skin and the indirect cause of the destruction of the oil.
- 889. Prior warning consists of giving warning and recommendation before taking action, with a view to preventing the occurrence of any probable injury.

CHAPTER I. WRONGFUL APPROPRIATION

SECTION I. WRONGFUL APPROPRIATION IN GENERAL.

- 890. If the wrongfully appropriated property exists in its original state, such property must be restored to the owner thereof at the place where it was wrongfully taken. If the owner meets the person who has wrongfully appropriated the property in some other place, and the wrongfully appropriated property is with him, the owner may, if he wishes, demand the return of the property there. If he asks for the property to be handed over at the place where the wrongful appropriation occurred, the expenses occasioned by handing over and transport fall upon the person who has wrongfully appropriated the property.
- 891. If the person who has wrongfully appropriated property destroys the same, he must make good the loss occasioned thereby. He is also liable to make good the loss if such property is destroyed or lost with or without his fault. Thus, he must pay the value thereof if such property is of the sort the like of which cannot be found in the market, as at the time and place at which the wrongful appropriation occurred, and give a similar article if like of it can be found in the market.
- 892. If the person wrongfully appropriating property returns the identical property to the owner thereof at the place where the wrongful appropriation occurred, he is free from all liability to make compensation.
- 893. If the person who has wrongfully appropriated property places such property before the owner thereof in such a way that he can take possession of it, the property is question is deemed to have been restored, even though the owner may not actually have taken delivery thereof.

If such person places the value of property which has been wrongfully appropriated and which has been destroyed before the owner thereof, he is not free from liability to make good the loss until the owner has taken delivery thereof.
- 894. If the person who has wrongfully appropriated some specific piece of property delivers such property to the owner thereof in a dangerous place, the owner has the right of refusing to accept it. In such case, the person who has wrongfully appropriated the property is not freed from the liability of making good for any loss.
- 895. If the person who has wrongfully appropriated property which has been destroyed, tenders the value thereof to the owner, who refuses to accept the same, such person may apply to the Court for an order for acceptance.
- 896. If the person whose property has been wrongfully appropriated is a minor, the person who has wrongfully appropriated may validly restore such property to the minor, provided the latter is of perfect understanding and capable of preserving the property, but not otherwise.
- 897. If the property wrongfully appropriated consists of fruit and the condition thereof changes while in the possession of the person who has wrongfully appropriated such property, such as by becoming dry, the owner has the option either of claiming the return of the identical property wrongfully appropriated, or of asking for the value thereof to be paid.
- 898. If the person wrongfully appropriating property in any way changes the nature of such property by adding thereto anything of his own, the person whose property has been wrongfully appropriated has the option either of claiming the value of such property, or of asking for the return of the identical property after paying the value of the increase. *yvT* U Example:- A wrongfully appropriates cloth and dyes the same. The owner thereof has the option either of claiming the value of the cloth or of asking for the return of the cloth itself after paying the price of the dye.
- 899. If the person wrongfully appropriating property alters such property in such a way that the same thereof is changed, he is bound to make good the loss and keep the property himself. *yvT* * Examples:-
 - (1). A wrongfully appropriates certain wheat and grinds it into flour. He is obliged to make good the loss and the flour becomes his property.
 - (2). A wrongfully appropriates wheat and sows it in his own field. He is obliged to make good the loss and the crops becomes his property.
- 900. If the price and the value of a thing decrease after the wrongful appropriation thereof, the owner may not refuse to accept it and claim the value thereof at the time such thing was wrongfully appropriated. But if the value of such thing was wrongfully appropriated. But if the value of such thing decreases by reason of the use thereof by the person who has wrongfully appropriated such property, such loss must be made good. Examples :-
 - (1). A wrongfully appropriates an animal and restores such animal to its owner in a weakened condition. A is bound to make good the decrease in the value of the animal.
 - (2). A wrongfully appropriates clothes and tears them, thereby decreasing their value. If the decrease is of small amount, that is to say, if it does not amount to one-fourth of the value of the property wrongfully appropriated, the person wrongfully appropriating such property is liable to make good the loss. But if the decrease in value is of great amount, that is to say, if it is equal to or exceeds one fourth of the value thereof, the person from whom such property has been wrongfully appropriated has the option either of claiming to have the amount of the decrease in value made good, or of abandoning the property to the person wrongfully appropriating it and claiming the full value thereof.
- 901. Any act whereby a person is deprived of his power to deal with his own property and which results in a situation equivalent to that created by wrongful appropriation is considered to amount to wrongful appropriation. Thus, if a person to whom property has been entrusted for safe keeping denies such trust, such act amounts to wrongful

appropriation, and if thereafter the property entrusted to him is destroyed without his fault, he is liable to make good the loss.

- 902. If any person is deprived of possession of his property held in absolute ownership without any intention of being so deprived, as where a garden situated upon a mountain subsides and fall upon another garden situated below it, the property which is of lesser value is subject to that which is of greater value. That is to say, the owner of property which is greater in value is bound to indemnify the owner of property which is of lesser value, and becomes owner of such property.

Examples:-

(1). If the value of the garden situated above is worth five hundred piastres and that of the garden situated below is worth one thousand piastres before the collapse of the mountain, the owner of the latter, by paying the owner of the former five hundred piastres, may take over the first garden.

(2). The owner of a pearl worth fifty piastres drops it and it is swallowed by a hen worth five piastres. The owner of the pearl may take the hen upon payment of five piastres. (See Articles 27, 27, and 29.)

- 903. Any increase in the property wrongfully appropriated belongs to the owner thereof. If the person wrongfully appropriating such property consumes such increase, he is bound to make good the loss.yvT , Examples: The milk and young of an animal wrongfully appropriated and which are produced while in the possession of the person wrongfully appropriated them, and the fruit produced in a garden while in the possession of a person who has wrongfully appropriated such garden, are the property of the owner of the things wrongfully appropriated; and if the person wrongfully appropriating them consumes them, he is liable to make good the loss.
- 904. The honey of bees which make their home in a garden belongs to the owner of the garden. If any other person takes and consumes such honey, he is liable to make good the loss.

SECTION II. WRONGFULLY APPROPRIATION OF REAL PROPERTY.

- 905. If the property wrongfully appropriated is real property, the person wrongfully appropriating such property is bound to restore it to the owner thereof without any change or decrease.

If the real property wrongfully appropriated is decreased in value by the act of the person wrongfully appropriating such property, he is bound to make good the decrease in value.yvT [Examples:-

(1). A wrongfully appropriates a house and destroys a part thereof, or ruins it by living in it. If the value thereof decreased, he is bound to make good the amount of such decrease.

(2). If a person wrongfully appropriating a house destroys it by lighting a fire therein, he is bound to make good the building value of such house.

- 906. If the property wrongfully appropriated is land and the person wrongfully appropriating such property constructs building or plants trees thereon, such person shall be ordered to restore such land after uprooting the trees or pulling down the buildings.

If the fact of pulling down the buildings or of uprooting the trees causes injury to the land, the person whose land has been wrongfully appropriated may take possession of such buildings or trees upon paying the pulling-down value thereof.

If the value of the buildings and trees is greater than that of the land, however, and such buildings or trees have been constructed or planted under the belief that there was some legal justification for so doing, the owner of the buildings or trees may claim to be vested with the ownership of the land, upon paying the price thereof.yvT Example:- A inherits a piece of land from his father and erects buildings thereon for a cash expenditure exceeding the value of the land. Thereupon, a person who has a right to that land appears and claims it. A is entitled to take possession of the land upon paying the price thereof.

- 907. If a person wrongfully appropriates a piece of land belonging to another and cultivates it, and the owner obtains the return thereof, the latter is also entitled to be indemnified for any decrease in the value of the land arising out of such cultivation.

Similarly, if a person who is joint owner with another of a piece of land cultivates that land alone without the permission of the other, such person's co-owner is entitled, upon taking his share of the land, to be compensated, in respect to his share, for any decrease in the value of the land caused by the other co-owner's cultivation.

- 908. If a person wrongfully appropriates a field belonging to another and clears it, and the owner thereafter retakes possession of such field, such person has no right of claiming the cost of clearing the land from the owner thereof.
- 909. If any person occupies a piece of land belonging to another and places sweepings or similar refuse thereon, such person shall be obliged to remove such matter, and to evacuate the land.

SECTION III. WRONGFUL APPROPRIATION FROM A PERSON WHO HAS ALREADY WRONGFULLY appropriated PROPERTY.

- 910. Any person who wrongfully appropriates property from a person who has already wrongfully appropriated such property is considered to be in the same position as the first person wrongfully appropriating the property. Consequently, if property already wrongfully appropriated is again wrongfully appropriated from the first person by some other person and is destroyed by him or while in his possession, the person from whom the property has been wrongfully appropriated has the option of claiming to have his loss made good either by the first or second person who has wrongfully appropriated such property. He also has the option of claiming a portion of the value of the property from the first and a portion from the second person wrongfully appropriating such property. If the first person wrongfully appropriating such property makes good the loss thereof, such person has a right of recourse against the second. If the second person, however, makes good loss, such person has no right of recourse against the first.
- 911. If the second person wrongfully appropriating property restores it to the first person who has wrongfully appropriated such property, the former alone is free from liability in connection therewith. If he returns it to the person from whom the property has been wrongfully appropriated, however, both persons are free from liability.

CHAPTER II. DESTRUCTION OF PROPERTY.

SECTION I. DIRECT DESTRUCTION OF PROPERTY.

- 912. If any person destroys property of another, whether intentionally or unintentionally, and whether in his own possession or in that of some person to whom it has been entrusted, such person must make good the loss occasioned thereby.

If any person destroys property which has been wrongfully appropriated while in the possession of the person who has wrongfully appropriated it, the owner of the property may claim to have the loss made good by the person who has wrongfully appropriated such property, who in turn has a right of recourse against the person who destroyed the property, or he can claim to have the loss made good by him. The latter, however, has no right of recourse against the person wrongfully appropriating the property.

- 913. If a person slips and falls upon and destroys any property belonging to another, he is bound to make good the loss.
- 914. If any person destroys the property of any other [person under the mistaken belief that it is his own, he must make good any loss occasioned thereby.
- 915. If any person drags the clothes of another and tears them, he must make good the full value thereof. If a person takes hold of the clothes of another, and the owner of such clothes drags them and tears them, however, such person is liable to make good half the value thereof.

Similarly, if any person sits upon the skirt of another, and the owner, unaware thereof, gets up, and tears his clothes, such person must make good half the value of the clothes.

- 916. If a minor destroys the property of another, he must make good the loss thereof out of his own property. If he is not possessed of any property, payment may be postponed until he is in a position to pay. His tutor may not be called upon to make good the loss.
- 917. If any person causes any diminution in value of the property of another, he must make good the amount of such loss.
- 918. If any person without justification knocks down the real property of another, such as a house or a shop, the owner of such property has the option either of abandoning the debris of such real property to the person who has knocked it down and of claiming the building value thereof from him, or of deducting the value of the debris from the building value of such real property and of claiming the value of the remainder, keeping the debris. If the person wrongfully appropriating such property rebuilds the property and restores it to its original state he is not liable to make compensation.

- 919. Should fire break out in any particular place and should any person pull down a house without the permission of the owner thereof, and the fire is stopped, such person is not liable to make good the loss occasioned thereby, provided he has pulled down the house by order of the authorities. If he pulls down the house on his own initiative, however, he must make good the loss.
- 920. If any person without any justification cuts down the trees in the garden of another, the owner has the option of claiming the standing value of such trees and of abandoning them to the person who has cut them down, or of deducting the cut-down value from the standing value and of claiming the balance together with the trees cut down.yvT " Example:- If the value of the garden with the trees standing amounts to ten thousand piastres and without the trees to five thousand piastres, and the value of the trees when cut down to two thousand piastres, the owner has the option of leaving the trees cut down to the person who has felled them, and of taking five thousand piastres, or of taking three thousands piastres, keeping the trees cut down.
- 921. The fact that a person has suffered an injury does not authorise that person to inflict an injury upon another person.yvT I Examples:-
 - (1). A destroys the property of B. If B in turn destroys the property of A, both persons are liable to make good the loss they have caused.
 - (2). A member of one tribe destroys the property of a member of another tribe. The latter destroys the property of another member of the first tribe. Both persons are liable to make good the loss they have caused.
 - (3). A is given counterfeited money by B. B may not pass the money on to another person.

SECTION II. INDIRECT DESTRUCTION OF PROPERTY.

- 922. If a person is the cause of the destruction of the property of another, or of any decrease in the value thereof, that is to say, if his own act is the cause leading to the destruction or decrease in value of such property, such person must make good the loss.yvT - Examples:-
 - (1). A quarrels with B. During the quarrel A seizes hold of B's c;other, and an object in B's clothes falls to the ground and is destroyed or damaged. A is bound to make good the loss.
 - (2). A without any justification cuts off the water in B's field or garden. If the crops and plantations dry up and are destroyed, or if A lets the water overflow into the garden of another and swamps his crops, causing them to be destroyed, A must make good the loss.
 - (3). A opens the door of B's stable. An animal therein runs away and is lost. A must make good the loss.
 - (4). A opens the door of a cage belonging to B. A bird therein flies away. A must make good the loss.
- 923. If an animal takes fright at a particular person and runs away and is lost, such person is not obliged to make good the loss. But if such person intentionally frightens such animal, he is bound to make good the loss. Similarly, if an animal takes fright at the noise of a gun fired by a huntsman when hunting and runs away, and while doing so, falls and is killed or breaks its leg, the huntsman is not liable to make good the loss. But if the latter fires his gun with the intention of frightening the animal, he is bound to make good the loss. (See Article 93).
- 924. The liability of a person who is the cause of an act, as referred to above, to make good any loss sustained thereby, depends upon such act being of a wrongful nature. That is to say, the liability of a person who causes an injury to be sustained to make good the loss caused thereby, is dependent upon the act which led to such injury being performed by him without any justification.yvT F Example :- A without permission from any public authority digs a well in the public highway. An animal belonging to B falls therein and is destroyed. A must make good the loss. But if A digs a well in his own land held in absolute ownership and B's animal falls therein and is destroyed, A is not liable to make good the loss.
- 925. If a person performs any act which is the cause of the destruction of a thing and meanwhile some voluntary act supervenes, that is to say, if some other person directly destroys that thing, the author of such voluntary act is liable to make good the loss. (See Article 90.)

SECTION III. MATTERS OCCURRING IN THE PUBLIC HIGHWAY.

- 926. Every person has a right of way on the public highway, subject to the safety of others. That is to say, provided no harm is caused to others in circumstances which can be avoided.yvT O Examples:-
 - (1). If a porter drops the load he is carrying on the public highway and destroys the property of another, the porter must make good the loss.
 - (2). If sparks fly from a blacksmith's shop while he is working iron and set fire to the clothes of a passer-by in the public highway, the blacksmith must make good the loss.
- 927. No person may set up in the public highway for the purpose of buying and selling without the permission of the public authorities, nor may he place or produce any thing there without permission. If he does so, he is bound to make good any injury or loss which may be caused thereby.yvT Examples:-
 - (1). A piles up wood or stones in the public highway. B's animal treads thereon, slips and is destroyed. A must make good the loss.
 - (2). A drops a slippery substance such as oil on the public highway. B's animal slips thereon and is destroyed. A must make good the loss.
- 928. If a wall belonging to a particular person falls down and causes damage to any other person, the owner of the wall is under no necessity to make good the loss. But if some other person has previously warned the owner to knock down the wall as it is likely to collapse, and sufficient time has elapsed for the wall to be knocked down, the owner is then obliged to make good the loss. Provided always that the person giving such warning has the right to do so. Thus, if the wall has collapsed on to a neighbour's house, the person giving the warning must be one of the inhabitants of that house. A warning given by a person outside is of no effect. If the wall collapses on to a private road, the person giving the warning must be a person having a right of way over such road. If it collapses on the public highway, any person whatsoever has the right of giving the warning.

SECTION IV. INJURY CAUSED BY ANIMALS.

- 929. The owner of an animal is not liable to make good any damage caused by the animal of its own volition. (See Article 94). But if an animal consumes the property of some other person and the owner of the animal is cognizant thereof and takes no steps to prevent the injury, the owner is bound to make good the loss. But if the owner of an animal known to be of a destructive character such as a bull which gores, or a dog which bites, is warned by one of the inhabitants of the district or village to tie up such animal, and the owner nevertheless lets him go loose and he destroys the animal or the property of some other person, the owner is bound to make good the loss.
- 930. If an animal, whether ridden by its owner or not, and while on land owned by him in absolute ownership, injures any other person by striking such person with his fore feet, or with his head, or tail, or by kicking with his hind legs, the owner of such animal is liable to make good the loss.
- 931. If any person causes any animal to enter the property held in absolute ownership belonging to another, having obtained the permission of the owner of such property to do so, such animal is regarded as being on such person's land, and the owner is not liable to make good the loss in respect to any injury caused by such animal, as set forth in the preceding Article. If the owner has caused the animal to enter without such permission, he is liable in any case to make good any damage caused, whether riding, leading or driving, or even when not near to such animal. But if an animal breaks loose and enters the property of another held in absolute ownership and does damage thereon of its own accord, the owner is not liable to make good the loss.
- 932. Every person has a right of way with his animal over the public highway. Consequently, if anyone rides his animal on the public highway, he is not liable to make good any injury or loss which he could not have avoided.yvT o Example: If dirt and mud are scattered about by the hoofs of an animal and another person's clothes are splashed therewith; or if such animal kicks with his hind legs or swishes his tail and inflicts injury thereby, there is no need to make good the loss. But a person riding an animal is responsible for collision or for blows inflicted by the fore feet or the head.
- 933. Any person leading and any person driving an animal in the public highway is considered to be the same as a person riding such animal. That is to say, there are only obliged to make good any loss sustained to the extent that the person riding the animal is so obliged. the public
- 934. No person has the right of stopping or of tying up his animal in the public highway. Consequently, if any person stops his animal or ties it up in the public highway and such animal kicks with his fore or hind legs, or inflicts injuries in any other way, such person is in every case obliged to make good the loss caused by such animal. An exception, however, is made in the case of places specially set aside for animals, such as horse- markets and places for animals sent out on hire.
- 935. If any person turns his animal loose on the public highway he is responsible for any injury caused by such animal.

- 936. If an animal ridden by any person tramples upon anything with either his fore or hind legs, whether upon his own property or upon that of any other person and such thing is destroyed, such person is considered to have directly destroyed it and in every case is bound to make good the loss.
- 937. If the animal does not take the bit, and the rider is unable to hold his head, and injury is caused by such animal, the rider is not responsible therefor.
- 938. If any person ties his animal up in his own property and a second person arrives and likewise ties up his animal there without permission, and the animal belonging to the owner of the property kicks and destroys the animal belonging to such second person, the owner of the first animal need not make good the loss.
If the animal belonging to the second person destroys the animal of the owner of the property, the second person must make good the loss.
- 939. If two persons have the right of tying up their animals in one place, and having done so, one of them destroys the other, there is no need to make good the loss.yvT -
Example:- Two persons who are joint owners of a horse tie up their animals in a certain place in such house and while there the animal belonging to one of them destroys the animal belonging to the other. The owner of the animal inflicting the injury is not liable to make good the loss.
- 940. If two persons tie up their animals in a place where they have no right to do so and the animal belonging to the first person who ties up animal destroys the animal belonging to the second, the first person is not obliged to make good the loss. BUt if the animal belonging to the second person who so ties up his animal destroys the animal belonging to the first, the second person must make good the loss.

PROMULGATED BY ROYAL IRADAH, 23RD RABI UL AKHRA, 1289.